

1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 DEPARTMENT OF LABOR

3 OFFICE OF WORKERS' CLAIMS

4 (Amendment)

5 803 KAR 25:096. Selection of physicians, treatment plans and statements for
6 medical services.

7 RELATES TO: KRS Chapter 342

8 STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260, 342.320, 342.735

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Executive
10 Director [~~Commissioner~~] of the Office [~~Department~~] of Workers Claims to promulgate
11 administrative regulations necessary to carry on the work of the department under KRS
12 Chapter 342. KRS 342.735 requires the executive director [~~commissioner~~] to promulgate
13 administrative regulations to expedite the payment of medical expense benefits. This
14 administrative regulation regulates the selection of physicians and provides for treatment
15 plans under KRS Chapter 342 in order to assure high quality medical care at a
16 reasonable cost.

17 Section 1. Definitions. (1) "Designated physician" means the physician selected by the
18 employee for treatment pursuant to KRS 342.020(5).

19 (2) "Emergency care" means:

1 (a) Those medical services required for the immediate diagnosis or treatment of a
2 medical condition that if not immediately diagnosed or treated could lead to a serious
3 physical or mental disability or death; or

4 (b) Medical services which are immediately necessary to alleviate severe pain.

5 (3) "Long-term medical care" means:

6 (a) Medical treatment or medical rehabilitation that is reasonably projected to require a
7 regimen of medical care for a period extending beyond ninety (90) days;

8 (b) Medical treatment that continues for a period of more than ninety (90) days; or

9 (c) Medical treatment including the recommendation that the employee not engage in
10 the performance of the employee's usual work for a period of more than sixty (60) days.

11 (4) "Physician" is defined in KRS 342.0011(32).

12 (5) "Statement for services" means:

13 (a) For a nonpharmaceutical bill, a completed Form HCFA 1500, or for a hospital, a
14 completed Form UB-04 (formerly UB-92), with an attached copy of legible treatment
15 notes, hospital admission and discharge summary, or other supporting documentation for
16 the billed medical treatment, procedure, or hospitalization; and

17 (b) For a pharmaceutical bill, a bill containing the identity of the prescribed medication,
18 the number of units prescribed, the date of the prescription, and the name of the
19 prescribing physician.

20 (6) "Treatment plan" means a written plan that:

21 (a) May consist of copies of charts, consultation reports or other written documents
22 maintained by the employee's designated physician discussing symptoms, clinical

1 findings, results of diagnostic studies, diagnosis, prognosis, and the objectives,
2 modalities, frequency, and duration of treatment;

3 (b) Shall include, as appropriate, details of the course of ongoing and recommended
4 treatment and the projected results; and

5 (c) May be amended, supplemented or changed as conditions warrant.

6 Section 2. Employer's Obligation to Supply Kentucky Workers' Compensation
7 Designation and Medical Release Card (Form 113). Within ten (10) days following receipt
8 of notice of a work injury or occupational disease causing lost work time or necessitating
9 continuing medical treatment, the medical payment obligor shall mail a Form 113 to the
10 employee, including a self-addressed, postage prepaid envelope for returning the Form
11 113. Failure by the medical payment obligor to timely mail the form shall waive an
12 objection to treatment by other than a designated physician prior to receipt by the
13 employee of the form.

14 Section 3. Employee Selection of Physician. (1)(a) Except for emergency care,
15 treatment for a work-related injury or occupational disease shall be rendered under the
16 coordination of a single physician selected by the employee.

17 (b) If the employer utilizes an approved managed health care plan as defined in 803
18 KAR 25:110, the employee shall select a gatekeeper physician from the list provided by
19 the employer.

20 (c) The employee shall give notice to the medical payment obligor of the identity of the
21 designated physician by tendering the completed Form 113, including a written
22 acceptance by the designated physician, within ten (10) days after treatment is
23 commenced by that physician.

1 (2) Within ten (10) days following receipt of a Form 113 designating a treating
2 physician, the medical payment obligor shall tender a card to the employee, which shall
3 be presented to a medical provider each time that a medical service is sought in
4 connection with the work-related injury or occupational disease.

5 (3) The card shall serve as notice to a medical provider of the identity of the
6 designated physician, who shall have the sole authority to make a referral to a treatment
7 facility or to a specialist.

8 (a) The card shall bear the legend "First Designated Physician-Workers'
9 Compensation" and shall further contain the following information:

10 1. Name and telephone number of the first designated physician;

11 2. Name, Social Security number, date of birth, and date of work injury or occupational
12 disease and last exposure of the employee; and

13 3. Name and telephone number of the medical payment obligor.

14 (b) The reverse side of the first designated physician card shall contain:

15 1. A notice that treatment shall be performed by or on referral from the first designated
16 physician; and

17 2. Shall further contain space for the identification and notification of a change of
18 designated physician.

19 (4) Failure by the medical payment obligor to timely mail the "First Designated
20 Physician" card shall waive an objection to treatment by other than a designated
21 physician prior to receipt by the employee of the card.

1 (5) The unreasonable failure of an employee to comply with the requirements of this
2 section may suspend all benefits payable under KRS Chapter 342 until compliance by the
3 employee and receipt of the Form 113 by the medical payment obligor has occurred.

4 Section 4. Change of Designated Physician. (1)(a) Following initial selection of a
5 designated physician, the employee may change designated physicians once without
6 authorization of the employer or its medical payment obligor.

7 (b) Referral by a designated physician to a specialist shall not constitute a change of
8 designated physician unless the latter physician is specifically selected by the employee
9 as the second designated physician.

10 (2)(a) Within ten (10) days of a decision to change the designated physician, the
11 employee shall complete the back of the first designated physician card and return the
12 card with the name of the second designated physician, including a written acceptance by
13 the second designated physician, to the medical payment obligor; and ~~[, which]~~

14 (b) The medical payment obligor shall issue a second card within ten (10) days from
15 receipt of the written request indicating a change of designated physician.

16 (3) The card shall bear the legend "Second Designated Physician-Workers'
17 Compensation" and shall further contain the information required on the first designated
18 physician card. The reverse side of the card shall contain a notice that:

19 (a) Treatment shall be performed by or on referral from the second designated
20 physician; and

21 (b) A further change of designated physician shall require the written consent of the
22 employer, its medical payment obligor, ~~[arbitrator,]~~ or the administrative law judge.

1 (4) Failure by the medical payment obligor to timely mail the "Second Designated
2 Physician" card shall waive an objection to treatment by other than a designated
3 physician prior to receipt by the employee of the card.

4 (5)(a) If an employee's two (2) choices of designated physician have been exhausted,
5 he shall not, except as required by medical emergency, make an additional selection of a
6 physician without the written consent of the employer, its medical payment obligor,
7 [arbitrator,] or the administrative law judge.

8 (b) This consent shall not be unreasonably withheld.

9 (6) If the employer provides medical services through a managed health care system,
10 it may establish alternate methods for provider selection within the managed health care
11 plan.

12 Section 5. Treatment Plan. (1) A treatment plan shall be prepared if:

13 (a) Long-term medical care is required as a result of a work-related injury or
14 occupational disease;

15 (b)1. The employee has received treatment with passive modalities, including
16 electronic stimulation, heat or cold packs, massage, ultrasound, diathermy, whirlpool, or
17 similar procedures for a period exceeding sixty (60) days; and 2. The treatment plan shall
18 detail the need for the passive treatment, the benefits, if any, derived from the treatment,
19 the risks attendant with termination of the treatment, and the projected period of future
20 treatment; or

21 (c)1. An elective surgical procedure or placement into a resident work hardening, pain
22 management, or medical rehabilitation program is recommended; and 2. The treatment

1 plan shall set forth specific and measurable performance goals for the employee through
2 the surgery, work hardening, or medical rehabilitation program.

3 (2)(a) The designated physician shall provide a copy of the treatment plan to the
4 medical payment obligor seven (7) days in advance of an elective surgical procedure or
5 placement into a resident work hardening, pain management, or medical rehabilitation
6 program.

7 (b) In all other instances when a treatment plan is required, a copy of the treatment
8 plan shall be provided within fifteen (15) days following a request by the medical payment
9 obligor.

10 (c) An amendment, supplement, or change to a treatment plan shall be furnished
11 within fifteen (15) days following a request.

12 (3)(a) Preparation of a treatment plan shall be a necessary part of the care to be
13 rendered and shall be an integral part of the fee authorized in the medical fee schedule
14 for the underlying services.

15 (b) An additional fee shall not be charged for the preparation of a treatment plan or
16 progress report, except for the reasonable cost of photocopying and mailing the records.

17 Section 6. Tender of Statement for Services. If the medical services provider fails to
18 submit a statement for services as required by KRS 342.020(1) without reasonable
19 grounds, the medical bills shall not be compensable.

20 Section 7. Written Denial of Statement for Services Prior to the Resolution of Claim.

21 (1) Prior to resolution of a workers' compensation claim by opinion or order of an
22 [arbitrator or] administrative law judge, the medical payment obligor shall notify the
23 medical provider and employee of its denial of a specific statement for services, or

1 payment for future services from the same provider, in writing within thirty (30) days
2 following receipt of a completed statement for services.

3 (2) A copy of the denial shall be mailed to the employee, employer, and medical
4 service provider.

5 (3) The denial shall:

6 (a) Include a statement of the reasons for denial and a brief synopsis of available
7 utilization review or medical bill audit procedures with relevant telephone contact
8 numbers; and

9 (b) Be made for a good faith reason.

10 (4) Upon receipt of a denial from a medical payment obligor, a medical provider may
11 tender a statement for services to another potential payment source or to the patient.

12 Section 8. Payment or Challenge to Statement for Services Following Resolution of
13 Claim. (1) Following resolution of a claim by an opinion or order of an ~~[arbitrator or]~~
14 administrative law judge, including an order approving settlement of a disputed claim, the
15 medical payment obligor shall tender payment or file a medical fee dispute with an
16 appropriate motion to reopen the claim, within thirty (30) days following receipt of a
17 completed statement for services.

18 (2) The thirty (30) day period provided in KRS 342.020(1) shall be tolled during a
19 period in which:

20 (a) The medical provider submitted an incomplete statement for services.

21 1. The payment obligor shall promptly notify the medical provider of a deficient
22 statement and shall request specific documentation.

1 2. The medical payment obligor shall tender payment or file a medical fee dispute
2 within thirty (30) days following receipt of the required documentation;

3 (b) A medical provider fails to respond to a reasonable information request from the
4 employer or its medical payment obligor pursuant to KRS 342.020(4);

5 (c) The employee's designated physician fails to provide a treatment plan if required
6 by this administrative regulation; or

7 (d) The utilization review required by 803 KAR 25:190 is pending.

8 1. The thirty (30) day period for filing a medical fee dispute shall commence on the
9 date of rendition of the final decision from the utilization review.

10 2. A medical fee dispute filed thereafter shall include a copy of the final utilization
11 review decision and the supporting medical opinions.

12 (3) An obligation for payment or challenge shall not arise if a statement for services
13 clearly indicates that the services were not performed for a work-related condition.

14 Section 9. Payment Pursuant to Fee Schedules. (1) If the statement for services
15 contains charges in excess of those provided in the applicable fee schedule established
16 in 803 KAR 25:089, 803 KAR 25:091, and 803 KAR 25:092, the medical payment obligor;

17 (a) shall make payment in the scheduled amount; and

18 (b) shall serve a written notice of denial setting forth the reason for refusal to pay a
19 greater amount.

20 (2) Following receipt of a final medical bill audit reconsideration decision pursuant to
21 803 KAR 25:190, the medical provider shall file within thirty (30) days a medical fee
22 dispute in accordance with 803 KAR 25:012 to dispute the amount of payment.

1 Section 10. Patient Billing. (1) A medical provider may tender a statement for services
2 to a patient once it has received:

3 (a) A written denial from the medical payment obligor; or

4 (b) An opinion by an ~~[arbitrator or]~~ administrative law judge finding that the services
5 were unrelated to a work injury or occupational disease.

6 (2) The medical provider shall not bill a patient for services which have been found to
7 be unreasonable or unnecessary by an ~~[arbitrator or]~~ administrative law judge, if the
8 medical provider has been joined as a party to a workers' compensation claim or to a
9 medical fee dispute and has had an opportunity to present contrary evidence.

10 (3) The medical provider shall not bill a patient for services which have been denied
11 by the payment obligor for failure to submit bills following treatment within forty-five (45)
12 days as required by KRS 342.020 and Section 6 of this administrative regulation.

13 Section 11. Request for Payment for Services Provided or Expenses Incurred to
14 Secure Medical Treatment. (1) If an individual who is not a physician or medical provider
15 provides compensable services for the cure or relief of a work injury or occupational
16 disease, including home nursing services, the individual shall submit a fully completed
17 Form 114 to the employer or medical payment obligor within sixty (60) days of the date
18 the service is initiated and every sixty (60) days thereafter, if appropriate, for so long as
19 the services are rendered.

20 (2)(a) Expenses incurred by an employee for access to compensable medical
21 treatment for a work injury or occupational disease, including reasonable travel expenses,
22 out-of-pocket payment for prescription medication, and similar items shall be submitted to

1 the employer or its medical payment obligor within sixty (60) days of incurring of the
2 expense.

3 (b) A request for payment shall be made on a Form 114.

4 (3) Failure to timely submit the Form 114, without reasonable grounds, may result in a
5 finding that the expenses are not compensable.

6 Section 12. Incorporation by Reference. (1) The following material is incorporated by
7 reference:

8 (a) Form 113, "Notice of Designated Physician", (August 15, 1996 Edition), Office
9 [Department] of Workers Claims; and

10 (b) Form 114, "Request for Payment for Services or Reimbursement for Compensable
11 Expenses", (August 15, 1996 Edition), Office [Department] of Workers Claims.

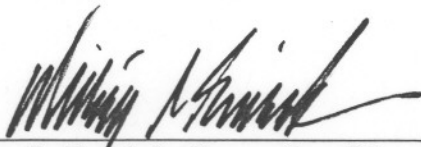
12 (2) This material may be inspected, copied, or obtained, subject to applicable
13 copyright law, at the Office [Department] of Workers Claims, Monday through Friday, 9
14 a.m. to 4 p.m., located at ~~[the following locations:~~

15 (a)] Prevention Park, 657 Chamberlin ~~[To Be Announced]~~ Avenue, Frankfort,
16 Kentucky 40601[;

17 ~~—(b) 410 West Chestnut Street, Louisville, Kentucky 40202;~~

18 ~~—(c) 220B North 8th Street, Paducah, Kentucky 42001; or~~

19 ~~—(d) 101 Summit Drive, Pikeville, Kentucky 41501].~~



William P. Emrick, Executive Director
Office of Workers' Claims

8-3-2007

Date

A public hearing on this administrative regulation shall be held on September 21, 2007, at 10:00 a.m. (EST) at the offices of the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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